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Workmen's Compensation, or Insurance Against Loss of Wages Arising Out of Industrial Accidents

ADDRESS

BY

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DELIVERED BEFORE

OHIO STATE BOARD OF COMMERCE

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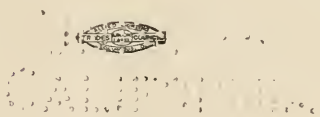
With Prefatory Note and Appendices



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PREFATORY NOTE.

The increasing interest in legislation to secure workingmen against loss arising from industrial accidents was attested in the appointment last winter of employers' liability commissions by the states of Connecticut, Illinois, Massachusetts, Minnesota, Montana, New Jersey, New York, Ohio, and Wisconsin, to investigate workingmen's compensation and insurance with a view to remedial legislation. These commissions recently met in Chicago to exchange views and to plan, so far as practicable, uniformity of action. The report of their proceedings, which is now passing through the press, will be the latest, and from the American viewpoint, probably the most important contribution to the subject.

The Illinois commission has finished its work and its report has been published. In speaking of this the secretary of the commission declares, "For the first time in the history of Illinois, if not in the United States, we have a text-book on the subject of employers' liability. More than 5,000 individual accidents were investigated and recorded, together with comparative figures and analyses." Reports of other state commissions, embracing as some of them will the testimony of experts who have investigated conditions in this country and the experience of European nations, will constitute a most valuable addition to the literature on this subject.

The Ohio commission at this time has not completed its work, and no attempt will be made to anticipate its report. It has had numerous and well attended public hearings in which employers, employes and other interested parties have spoken freely on almost every phase of compensation for accident. Indeed the discussions have taken a much wider range and have included sickness, invalidity and old age insurance. The systems and experiences of European nations, especially those of Germany and Great Britain, have been presented by experts who recently returned from abroad, where they had made extended and systematic investigation.

In general it may be said that manufacturers have favored a single compensation or accident insurance, similar to that of Germany. There have, however, been a few dissenting opinions. One manufacturer declared, among other things, that "it is just as impossible to enact a compulsory compensation act that would be constitutional as it would be to pass a valid compulsory arbitration law." "Both," he insisted, "are palpably unconstitutional. A compulsory compensation act would interfere with the right of contract. The only alternative, then, is a

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law that would make optional the acceptance by the employer or employe, and drawn so that it would naturally appeal to both."

Labor organizations seem to be generally opposed to the employes' bearing any part of the financial burden incident to an accident compensation law. The fund should be maintained, they claim, by the employer, who would provide for it by a slight increase in the price of the manufactured product. This does not differ widely from the German theory of compensation for accidents, although this theory is somewhat modified by the fact that incapacity for work, resulting from a non-fatal accident, for the first thirteen weeks, is considered sickness and is paid from the sick insurance fund to which employes contribute.

There is much literature on employers' liability and workingmen's insurance. Two bibliographies, containing extended lists of references to books and documents on each of these subjects, have been published by the Library of Congress. They may be had from the Superintendent of Documents, Washington, D. C., for ten cents each. Supplemental lists in manuscript form, with references to magazine articles, may be consulted in the Ohio State Library. We note here only a select few of the works published on the subject under consideration. "Compulsory Insurance in Germany," fourth special report of the U. S. Bureau of Labor, 1892, is a most important document as it contains a practically complete translation of the German law, with many elucidating comments and valuable statistical tables. "Workingmen's insurance," by W. F. Willoughby, a valuable contribution to the subject, was published in 1898. Perhaps the best work available, as well for its intrinsic merit as for its timely appearance, is "Workingmen's Insurance in Europe," by Lee K. Frankel and Miles M. Dawson, issued by the Charities Publication Committee, New York, 1910. It is a volume of 477 pages, an illuminating and impartial treatment of the subject to date, with numerous statistical tables, a biblography, and a conspectus presenting in parallel summary the operations and results of workingmen's insurance in Europe.

The address on the following pages was delivered by Hon. James Harrington Boyd, chairman of the Ohio Employers' Liability Commission, at the recent meeting of the Ohio State Board of Commerce. To this address are appended the workmen's liability laws and the recently adopted workmen's compensation act of the State of New York, with a decision sustaining the act, the law providing "accident and total disability insurance for coal miners" of Montana, and extracts, from the work described in the preceding paragraph, on workingmen's insurance in Germany. It is hoped that this publication may be helpful to members of the General Assembly of Ohio and that it may not be without interest to other citizens of the state. —C. B. G.

WORKMEN'S COMPENSATION, OR INSURANCE AGAINST LOSS OF WAGES ARISING OUT OF INDUSTRIAL ACCIDENTS.

By James Harrington Boyd.

INTRODUCTORY.

James J. Hill, on September 20, 1906, published his famous memoir on the conservation of coal, iron, and minerals and the soil. James Garfield, Theodore Roosevelt and Mr. Pinchot have been advocating the conservation of the national resources. I stand here today the advocate of the conservation of the human being, the conservation of the laboring man, who is the corner-stone of the state.

The object of this address is to formulate from an historical, economic and statistical point of view the problem which the Legislature of Ohio has propounded to the Employers' Liability Commission for a solution or for helps to a solution.

Employers' liability to and the compensation of employes for injuries received in industrial accidents is an old problem. It has its roots embedded in a hundred years of political, philosophical, economical and legal discussion. The great philosophers, economists and statesmen under whose guidance the German Empire was erected, gave their solution of this problem to the world more than twenty years ago. All the nations of Europe (except Turkey), Australia, New Zealand, and British Columbia, for some years have had their plans for handling this problem in operation. They have one and all abrogated the rules of common law defences excepting malicious negligence.

We approach this problem under changed and changing conditions. The world has grown more in the industrial relations during the last fifty years than it did in the two thousand years preceding. As James J. Hill pointed out, in the short span of forty years from today, the United States will have a population of at least 250,000,000[1].

Already, in fact we may say since 1900, our public domain has substantially passed into the hands of private ownership. Prior to this time a farm could be had by the courageous for the asking. Under these changed economic conditions, the real struggle for existence in the United States has begun. It is intensified by the addition of a million strangers to our numbers every year.

[1] James J. Hill. Address, St. Paul, Sept. 20, 1910.

Let us not forget that in 1870, 70 per cent of our population lived on the land and only 30 per cent in towns and cities[2]. But today more than 65 per cent live in towns and cities and only 35 per cent live on the land.

Under these conditions have our remedies for personal injuries been operating. It is now asked, What plan for compensation of employes for injuries received in industrial accidents will you recommend for the immediate and near future when we shall have from 150,000,000 to 250,000,000 inhabitants in the United States?

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[2] Census Report. 1870.

Under our common law procedure and that of England an employe injured in an industrial accident, without fault and able to prove that his employer was negligent, can recover damages for his injuries.

The plaintiff cannot recover if the defendant can prove:

(a) That the plaintiff's negligence contributed to the cause of the accident; or

(b) That the negligence of a fellow servant contributed to the cause of the accident; or

(c) That the plaintiff assumed the risk, even though the defendant was negligent.

With what efficiency do the common law remedies operate in compensating persons injured in industrial accidents?

We give the result of five investigations of wide scope, towit:

I. The report of the Employers' Liability Commission of New York State.

II. The Pittsburg Survey, six volumes, The Russell Sage Foundation, 1910.

III. Wisconsin Bureau of Labor and Industrial Statistics. Report for 1909.

IV. The report of the Employers' Liability Commission of Illinois, 1910.

V. European experience, that of Germany in particular.

I.

During the years of 1906-7-8 ten insurance companies which keep Employers' Liability records, doing business in New York, received in premiums from

Employers	$23,524,000
They paid to injured employes	8,560,000
Waste	$14,964,000[3]

Nothing could more strikingly set forth the waste of the present system. Only 36.34 per cent of what employers pay in premiums for liability insurance is paid in settlement of claims and suits. Thus, for every $100 paid out by employers for protection against liability to their injured workmen, less than $37 is paid to those workmen; $63 goes to pay the salaries of attorneys and claim agents whose business

[3] First report of the Employers' Liability Commission of New York, p. 31.

it is to defeat the claims of the injured, to the cost of soliciting business, to the cost of administration, to court costs, and to profit.

Out of this 36.34 per cent the injured employe must pay his attorney. The same report shows that the attorney gets 26.13 per cent of what is paid to the injured employe. This investigation covers forty-six cases where the recovery was above $1500 each. In small recoveries the attorney fees take a larger proportion. This report shows that not more than somewhere between 20 and 25 per cent of the money paid by the employing class goes actually into the pockets of injured workmen for their dependent families in death cases[4].

II.

The investigation recently conducted in Allegheny County, Pa., under the direction of the "Pittsburgh Survey," showed that out of 355 cases of men killed in industrial accidents, all of whom were contributing to the support of others and two-thirds of whom were married, eighty-nine of the families left received not a dollar of compensation from the employer, 113 families received not more than $100.00, and sixty-one families received something more than this $100.00. In other words 57 per cent of these families were left by their employers to bear the entire burden of income loss; and granting that all unknown amounts *would* be decided for the plaintiffs, only 26 per cent received, in compensation for the death of a regular income provider, more than $500.00, a sum which would approximate one year's income of the lowest paid of the workers killed.

The proportion of the loss borne by employers in injury cases does not differ greatly from that in death cases.

Thus, out of 288 injury cases, of the married men alone, 56 per cent received no compensation; of single men contributing to the support of others, 69 per cent received no compensation; of single men without dependents, 80 per cent received no compensation.

III.

The great financial losses borne by the workingmen are set forth by the Wisconsin Bureau of Labor and Statistics in the following report of 306 non-fatal cases of injuries:

	Cases.	*Per cent.*
Received nothing from employer	72	23.5
Received amount of doctor bill only	99	32.4
Received amount of part of doctor bill only	15	4.9
Received something in addition to doctor bills	91	29.7
Received something but not doctor bills	29	9.5
	306	100.00

[4] First report of the Employers' Liability Commission of New York, p. 31.

[5] Work accidents and their costs, by Crystal Eastman, Charities and Commons, Mar., 1909.

In other words, we may say that in two-thirds of the cases part or all of the doctor bills were paid, but in less than one-third was anything more paid, and in about one-fourth of the cases nothing whatever was paid.

Of 131 non-fatal cases in Wisconsin, concerning which reports were secured by factory inspectors, the following disposition was made:

	Cases.	*Per cent.*
Received nothing from employer	28	21.37
Received doctor bills only	56	42.75
Received something — doctor bills	10	7.63
Received something but not doctor bills	34	25.96
Not settled	3	2.29
Total	131	100.00

IV.

The Employers' Liability Commission of the State of Illinois has recently made a report of its investigation of industrial accidents and employers' liability at a cost of $10,000. I give you a condensed statement of the results of the investigation of the Illinois Commission in the language of Edwin R. Wright, Secretary of the Commission.

"So much has been said and written regarding the work of the Employers' Liability Commission that I wish to go into the matter at some length—setting forth the whole story in as few words as possible.

For the first time in the history of Illinois, if not in the United States, we have a text-book on the subject of Employers' Liability. More than 5,000 individual accidents were investigated and recorded, together with comparative figures and analyses. A few words as to what the report shows may be of value:

Six hundred and fourteen fatal accidents are recorded.

The families of two hundred and fourteen of these workers received nothing in return for the loss of the breadwinner.

One hundred and eleven damage suits are pending in court.

Twenty-four cases have been settled through court proceedings.

Two hundred and eighty-one families settled direct with the employer.

Skilled railroad employes, in settlement for death claims, averaged about	$1,000
Steel workers	874
Railroad laborers	617
Skilled building tradesmen	348
Skilled electric railway employes	310
Unclassified workmen	311
Miscellaneous trades	292
Packing house employes	234

General laborers	154
Mine workers	155
Electric railway laborers	75
Teamsters	000
Building laborers	000

These figures were not gathered indiscriminately. They are authentic and have been carefully verified. No attempt was made to "stack the cards." As secretary of the Commission I knew that conditions were so bad that any attempt at exaggeration would be folly.

A further summary may be offered: Of every 100 industrial accidents, fifteen go to court, seven are lost and eight won. *Ninety-two injuries out of every one hundred receive no compensation.* (This includes both fatal and non-fatal accidents.)

Another interesting feature is this: A search through the record reveals fifty-three fatal cases of recent date. In fatal cases, the usual defenses of the employer—the fellow-servant doctrine, assumption of risk, etc.—did not apply or there would not have been a recovery at all.

For these—the very pick of industrial cases—the average recovery for death was only $1,877.36. Of this an average amount of $750.95 was paid to attorneys or expended in court fees, etc., leaving an actual payment of $1,126.41 to the family of the dead worker. Thirty-four widows were compelled to seek employment and sixty-five children left school to help keep the wolf from the door.

Nor is this the only complaint of labor. Another section of the report shows where one injured workman is re-employed, two do not return to their former employer. The average age of workmen meeting with accidents is thirty-two years. Most of them are married. What becomes of the injured workman and his family God only knows.

The above is only the faintest outline of the work of the Commission. The report is valuable enough for every delegate to take home and study. It means a direct financial return to every citizen of Illinois, if the text is understood. It means civilization and progress and good citizenship. It means fewer hospitals and poorhouses. *It means food and clothes and education for little children.*

Issues are raised and pages are printed and speeches are made on a hundred subjects which becloud the issue. Workers have been gulled into following false prophets into the wilderness of specious reasoning. We are often robbed of just dues for our labor, our liberties are restricted, and our sensibilities degraded, but until we crystallize the attention of our unions upon a proper valuation of human life, all else seems futile. The State Federation of Labor should demand the conservation of human life, surrounding our membership with every known safeguard. This will reduce the number of injuries to a minimum. Then throw

the burden upon the industry. While we may not realize ideal conditions at once, we can at least place our state in the forefront of progressive legislation."

V.

In 1887 there were insured in Germany 3,861,560 workingmen among 319,453 establishments, and the number of notices of accidents was 106,101.

The German analysis of the 15,970 accidents which incapacitated workmen for more than thirteen weeks, shows:

That 19.76 per cent of the 15,970, or 3,156 injuries, were attributable to the fault of the employers.

That 25.64 per cent of the 15,970, or 4,094 injuries, were attributable to the fault of the injured.

That 54.60 per cent of the 15,970, or 8,720 injuries, were attributable to the fault of the injured and employer and inevitable risk when at work[6].

Thus 80.24 per cent of 15,970 of 12,834 injuries were attributable to the fault of the employe and the inherent dangers of the industry.

Now 18.51 per cent of these 12,834 were killed, 2,375.

18.70 per cent of these 12,834 were totally disabled, 2,272.

50.88 per cent of these 12,834 were partly disabled, 6,590.

[6] Fourth special Report of the Commissioner of Labor, 1893, p. 83.

CAUSES OF ACCIDENTS IN 1887.

Cause attributable to:	Per cent.	Number.
Fault of the employer:		
Insufficient apparatus for protection	10.64	1,700
Defective arrangement for carrying on business	7.03	1,122
Lack of directions or improper ones	2.09	334
Total	19.76	3,156
Fault of the injured:		
Awkwardness or inattention	16.49	2,634
Disobedience to orders	5.17	825
Heedlessness	1.98	316
Failure to make use of protective apparatus	1.76	281
Unsuitable clothing	.24	38
Total	25.64	4,094
Fault of the employed and injured	4.45	711
Fault of third person, particularly a co-laborer	3.28	524
No fault which can be assigned	3.47	554
Inevitable risk when at work	43.40	6,931

12.91 per cent of these 12,834 were incapacitated for a time longer than thirteen weeks, 1,657[7].

It follows therefore that out of 15,970 employes whose injuries lasted more than thirteen weeks, the common law remedies would give 3,156 employes such compensation as a jury would assess after a trial and all appeals were settled.[8]

But the common law does not pretend to compensate dependents of the 2,375 killed in these accidents where the cause of death could not be attributed wholly to the fault of the employer. Nor does the common law pretend to compensate the 2,272 injured workmen who were disabled for life, the fault not being attributable to the employer.

Nor does the common law offer any remedy for compensating the 6,590 injured workingmen who were partially disabled, the fault thereof not being traceable to the employer.

The state of Ohio now says that when 10,459 helpless and crippled persons and the dependents of 2,375 workmen deceased have become paupers it will house them.

It is, therefore, the duty of the state to provide by industrial insurance or compensation act, the means whereby 80 per cent of all workingmen who are now unable to do so may protect themselves against the inevitable calamities of industrial activity. It is the duty of the state, to conserve the self-respect of the family which is the unit of the state.

The bulletin for the Bureau of Labor for January, 1908, gives on page 120 the statistics of 46,000 industrial accidents collected by the German imperial insurance office.

The classification of the causes of the accidents is as follows:

		Per cent.
1.	Due to negligence or fault of employer	16.81
2.	Due to joint negligence of the employer and injured employee	4.66
3.	Due to negligence of co-employes (fellow servants)	5.28
4.	Due to "Acts of God"	2.31
5.	Due to fault or negligence of employee	28.89
6.	Due to inevitable accidents connected with the employment	42.05
	Total	100.00

[7] The result to the injured in the 15,970 cases are as follows:

RESULTS OF ACCIDENTS IN 1887.

Result caused.	Per cent.	Number.
Death	18.51	2,956
Lasting incapacity for work.		
Entire	17.70	2,827
Partial	50.88	8,126
Total	68.58	10,953
Incapacity for a time longer than thirteen weeks	12.91	2,061

[8] Schonberg, Handbuch XXII, pp. 737-748.

These figures grouped to correspond to those for one year, 1887, are:

1. Cause of accident attributable to employer	16.81
2. Cause of accidents attributable to employee	28.89
3. Due to the inherent risks of the business	54.30
Total	100.00

The agricultural laborers were admitted to insurance after 1887, and the act was made to cover a large additional class of less intelligent laborers.

The 19,000,000 workingmen who earn on an average less than $500 per annum, with their families, represent a population of 60,000,000 people.

They do most of the work of the nation. They represent the preponderance of its political power, they are the state, they cannot protect themselves against 80 per cent of the injuries received in industrial accidents and against the consequent poverty.

The state must provide a new remedy to correct the evils for which up to date, the laws of the state furnish no remedy.

"He that taketh away his neighbor's living slayeth him; and he that defraudeth the laborer of his hire is a blood-shedder."

Every civilized nation has decided that the product of labor of a given generation must support all during that time[9].

Looked at from a purely commercial standpoint, that of the rearing of men and women for the purpose of productive laborers, the elements of cost and waste have been studied with accurate results.

There is the rearing of children to the age of self-support, with the result that 13 per cent die during that period; during the assumed productive life of wage-earners, it is estimated that the loss from death is 25 per cent in the United States[10]. The loss through sickness is 6 percent[11]. Then you must add cost, in money and time, of accidents and the support of the aged.

Under these conditions it is claimed that the contract of labor, through some inadvertence is made as though sickness, accident, invalidity, and old age had been permanently banished from the earth; that the daily wage is sufficient only for daily necessities; that a man entitled to support for a lifetime unwillingly consents to a wage based upon a portion of that lifetime, for the competition in the field of labor is among the strong, the able bodied, the efficient[12].

We are surprised when told that Germany's poorer classes, though less favored by circumstances, maintain a higher level of well being and

[9] F. A. Walker, The wage question, p. 34.
[10] F. A. Walker, Wages, p. 35.
[11] C. S. Loch, Insurance and savings, p. 50.
[12] A. W. Lewis, State Insurance, p. 7.

far higher level of vitality than those of the United States and England[13].

In industries outside of agriculture, for the sake of comparison we might take $600 per annum as a minimum wage, based upon a family of five[14].

In Massachusetts during a period of great prosperity with the necessary attendant cost of living, out of 300,000 adult workmen only two-fifths received as much as twelve dollars per week. Making only proper allowance for unemployment, this would amount to considerably less than $600 per year[15]. It has been said that the 18,000,000 wage-earners of the United States receive an average wage of only $400 per annum.[16]

It is said that one-half of the families of the country and nine-tenths of those in the cities and industrial communities, are propertyless; that in a group of states including Massachusetts, one-fifth are in poverty[17]; that one-twentieth are paupers[18]; that one-eighth of the families hold seven-eighths, and one per cent hold over one-half of the property of the country[19]; and that 71 per cent of the people hold but 5 per cent of the wealth[20]; that one-eighth of the families receive over one-half of the total income, and that two-fifths of the better paid laborers receive more than the remaining three-fifths[21].

We can derive no comfort out of the statistics of Savings Bank Deposits. Take Massachusetts where there seems to be an average deposit of about $300. Investigation shows that, while far the largest number of deposits belong to the wage-earning class, the deposits of thirteen-fourteenths of the whole number are but slightly larger than those of the remaining one-fourteenth; that in a typical bank the average deposit of wage earners was less than $75[22].

In England "it took twenty-five years of legislation to restrict a child of nine to sixty-nine hours per week."[23] "It took seventy-five

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[13] A. Shodwell, Industrial Insurance, v. 2, p. 453.

[14] J. A. Ryan, A living wage, p. 150.

[15] Compare Massachusetts labor bulletin, No. 44, Dec., 1906, p. 430, with thirty-seventh annual report, 1906, Massachusetts Bureau of Statistics of Labor, pp. 279-281.

[16] Address before American Association for Advancement of Science, Dec. 27, 1906, by H. L. Call.

[17] Hunter, pp. 43-60.

[18] R. T. Ely in North American Review, v. 152, p. 398.

[19] C. P. Spahr, Present distribution in wealth in the United States, p. 69.

[20] G. K. Holmes in Political Science Quarterly, v. III, p. 593.

[21] G. K. Holmes in Political Science Quarterly, v. III, pp. 128-9.

[22] Massachusetts Bureau of Labor Statistics, third annual report, pp. 304-13; fourth annual report, p. 192.

[23] Hutchinson and Harrison, p. 21.

years to ascertain that the factory act, instead of weakening, had strengthened her in the world's rivalry."[24]

The assumption of any function by the state, like that of compulsory public education, is based upon higher grounds than compassion for a class. On what grounds does the state regulate the cholera, Bubonic plague, and build and maintain institutions for paupers and for the insane? Why not begin higher up and prevent pauperism and assist those who do the work of the nation and must fight its battles, who cannot protect themselves from having an eye put out or an arm or leg cut off or their lives crushed out?

The following table gives the percentage of accidents by days of the week for the years 1890 and 1892. The figures of 1890 were drawn from a table prepared by M. Bellom, in Etude de la Statistique des Accidents en Albemague; those for 1892, from a guide concerning the workmen's insurance of the German empire, prepared for the world's exhibition in Chicago by Mr. Žacher.

FOURTH SPECIAL REPORT OF THE COMMISSIONERS OF LABOR—1893, PAGE 102. PERCENTAGE OF ACCIDENTS BY DAYS OF THE WEEK.

Day.	Percentage.	
	1890	1892
Sunday	2.72	2.67
Monday	16.92	16.75
Tuesday	15.79	15.50
Wednesday	15.79	16.38
Thursday	15.64	15.50
Friday	16.57	16.60
Saturday	16.57	16.69
Total	100.00	100.00

Whatever the cause it is clear that the mechanical appliances have their limits, be they ever so much multiplied. This brings up the question, which is steadily gaining in prominence, how can all this external protection be used, not only to guard him from without, but to become a part of an educational influence that shall mould the character of the man? It is not expected that much can be done with the older laborers, but it is evidently an increasing purpose of this social legislation to use the whole machinery educationally. The spread of lectures already referred to is a part of this purpose, as is also the sending from the imperial bureau of circular letters to the trade associations, calling atten-

[24] Traill, Social England, v. VI, p. 825.

tion, not merely to the external measures of safety, but also to measures that are essentially educational in their nature.

It is also a tribute to the influence of this law that great numbers of the employing class in the trade association are actively interesting themselves in extending information and discovering new and more efficient measures. A fair example of this interest may be seen in the action taken by the trade association in Hamburg, June 10, 1892. A resolution was adopted to do all in their power to have exhibited in graphic and tabular form at the Chicago Exposition all that could be shown "in picture" of the sick and old age insurance, besides extensive illustration by models of the actual working of the accident law. The opinion was heartily indorsed that the scheme was practicable, as the exhibition of prevention of industry accidents in Berlin had shown.

The invalidity and old age insurance, established January 1, 1891, by imperial law of June 22, 1889, comprises the working people of all trades in territorial organizations (differing from accident and sickness insurance restricted to branches of trade) and promises when in state of permanence on every one hundred insured, one old age and eleven invalidity pensioners, i. e., out of 50,000,000 population to about 1,500,000 persons the benefit of 330,000,000 marks ($78,540,000) annuities.

The foregoing statement, with all the figures, was taken from a pamphlet entitled "The workmen's insurance of the German empire," a guide expressly prepared for the World's Exposition in Chicago, by the imperial insurance department in Berlin, 1893. The work was compiled by Dr. Zacher, permanent member of the imperial insurance department. The figures as far as they relate to the results for the year 1892 are round numbers, and of course only estimates. They are, however, estimates which have the weight of the highest official authority.

The few short tables which follow show results not exactly in agreement with the figures published by the imperial insurance department and just quoted. There is also a slight variation between the table, statistics of accident insurance in 1891, by industries, and the tables on page 20. These tables are given however, as they contain the most accurate information available in regard to the points of which they treat.

FOURTH SPECIAL REPORT OF THE COMMISSIONER OF LABOR—1893. PAGE 279.

COST OF INSURANCE AND RISK IN ACCIDENT INSURANCE ASSOCIATIONS, BY INDUSTRIES.

(From etude Statistique des Accidents du Travail, Office du Travail, 1892. Resultats Financiers de l'Assurance Obligatoire contre les Accidents du Travail, Paris, Office du Travail, 1892.)

Industry.	Per cent of total cost of insurance, including compensation and administration of wages.	Per cent of total amount paid in compensation of wages.	Per cent of fatal accidents of persons insured.	Per cent of accidents for which compensation was paid of persons insured.
Driving of vehicles	1.913	.891	.226	.941
Brewing	1.912	.930	.132	1.075
Flour mills	1.904	.787	.105	.720
Quarrying	1.744	.872	.119	.446
Mining	1.631	.852	.218	.769
Packing and despatch of goods	1.577	.736	.149	1.009
Paper making	1.494	.714	.080	.704
River navigation	1.422	.630	.207	.430
Maritime navigation	1.373	.436	.191	.196
Well digging	1.332	.831	.078	.458
Railway transportation (private)	1.311	.670	.121	.539
Sugar refining	1.299	.629	.049	.326
Chimney sweeping	1.285	.359	.084	.344
Building	1.238	.627	.083	.428
Distilling	1.233	.539	.066	.435
Wood cutting and carving	1.175	.559	.052	.605
Chemical industries	1.174	.591	.090	.526
Iron and steel	.988	.488	.056	.583
Gas and water works	.923	.410	.065	.380
Tramways	.734	.325	.029	.213
Brick and tile making	.723	.310	.035	.207
Food purveying	.701	.301	.025	.431
Leather work	.635	.286	.038	.285
Glass	.520	.240	.021	.183
Textile trades	.439	.204	.019	.216
Musical instrument making	.424	.171	.009	.129
Metal work (precious and other metals)	.409	.168	.011	.255
Stationery	.405	.146	.010	.237
Mechanical instrument making	.387	.129	.011	.216
Pottery	.313	.136	.015	.116
Printing	.277	.109	.007	.107
Clothing	.227	.097	.004	.037
Silk	.160	.069	.005	.140
Tobacco	.135	.043	.003	.036

COST OF INDEMNIFICATION, ADMINISTRATION, ETC., IN THE SEVERAL SECTIONS OF THE IRON AND STEEL TRADE ASSOCIATION OF SOUTH GERMANY IN 1891.

SECTION.	Establishments.	Persons injured.	Accidents.	Cost of indemnifications.	Per 1,000 laborers.		Administration.		Wages.	
					Accidents.	Cost of indemnifications.	Total cost.	Cost per person.	Total.	Per person.
I	1,451	15,382	89	$15,357 36	5.79	$998 40	$3,799 68	$0 24¾	$3,246,070 98	$211 03
II	961	14,715	118	20,216 92	8.02	1,373 90	1,069 83	.07¼	2,666,415 00	181 20
III	1,199	15,492	81	11,625 54	5.23	944 07	2,105 40	.13½	3,039,056 40	196 17
IV	944	13,999	98	12,420 62	7.00	887 25	1,594 05	.11½	2,648,068 27	189 16
V	433	14,976	93	10,333 83	6.21	690 03	1,406 67	.09½	2,853,681 06	190 55
VI	2,403	32,238	233	35,949 27	7.23	1,115 12	6,897 13	.21½	6,299,920 20	195 42
Total	7,394	106,802	712	$108,903 54	6.67	$1,019 68	$16,872 76	.15¾	$20,753,211 91	$194 31

COST OF ADMINISTRATION OF ACCIDENT INSURANCE, BY INDUSTRIES.

(From official statistics for 1891, published by the imperial insurance office, Berlin.)

Industry.	Cost of Administration.			
	Per person insured.	Per establishment.	Per accident reported.	Per cent of wages.
Mining	$0.13804	$28.06496	$1.73740	.014994
Quarrying	.16680	2.74176	9.96744	.049742
Mechanical insarument making	.19992	5.68344	9.51048	.022610
Iron and steel	.17374	9.40576	2.91312	.020230
Metal work (precious and other metals)	.11662	2.84172	7.27090	.015232
Musical instrument making	.17374	4.98134	15.25818	.024990
Glass	.17136	13.51126	10.20754	.025228
Pottery	.08568	5.83338	10.19830	.012852
Brick and tile making	.10710	2.16104	10.95990	.027370
Chemical industries	.32844	6.29272	7.38990	.039984
Gas and water works	.29274	6.93056	6.66400	.029512
Textile trades	.08092	7.07812	6.82584	.014280
Silk	.05474	3.55096	9.97934	.008092
Paper making	.24752	11.25264	7.77308	.041412
Stationery	.17374	5.05750	14.14434	.024038
Leather work	.18802	3.59856	12.25224	.023324
Wood cutting and carving	.21896	1.35422	6.12136	.032844
Flour mills	.53550	1.23046	19.61120	.086632
Food purveying	.17374	.85443	8.66320	.024038
Sugar refining	.13328	28.54096	5.60728	.031892
Distilling	.34986	1.81356	15.55092	.054740
Brewing	.39984	5.15746	5.56920	.040698
Tobacco	.05236	1.20904	19.90632	.010710
Clothing	.05950	2.08726	8.99402	.010472
Chimney sweeping	.81158	1.46608	55.42544	.135422
Building	.20706	1.55890	8.90596	.038794
Printing	.13090	2.13010	13.143236	.01532
Railway transportation (private)	.14042	32.78450	3.22490	.016660
Tramways	.14754	23.85712	4.62672	.030226
Packing and despatch of goods	.65121	1.69218	7.57316	.043554
Driving vehicles	.65212	1.70408	19.08760	.102102
River navigation	.38794	1.47560	12.13324	.056406
Maritime navigation	.33320	8.45378	7.71358	.056644
Well digging	.22134	2.93454	12.49500	.047362

PERSONS INSURED AND ACCIDENTS COMPENSATED BY ACCIDENT ASSOCIATIONS, 1890, 1891 AND 1892.

(The statistics for 1890 and 1891 are from the official statistics of the imperial insurance office, published December 6, 1892; those for 1892 are from The Workmen's Insurance of the German Empire, published by the imperial insurance office, Berlin.)

Kind of association.	Number of associations.	Establishment.	Persons injured.	Accidents compensated
Trade Associations:				
1890	112	5,234,243	13,015,370	.....
1891	112	5,181,761	17,382,827	128,584
1892	112	5,182,000	17,400,000	166,100
Office for state works:				
1890	316	.....	604,380	.....
1891	352	.....	632,459	8,956
1892	356	.....	600,000	10,900
Total:				
1890	428	5,234,243	13,619,750	.....
1891	464	5,181,761	18,015,286	137,540
1892	468	5,182,000	18,000,000	177,000

RECEIPTS, EXPENSES, AND FUNDS OF ACCIDENT ASSOCIATIONS, 1890, 1891 AND 1892.

(The statistics for 1890 and 1891 are from the official statistics of the imperial insurance office, published December 6, 1892; those for 1892 are from The Workmen's Insurance of the German Empire, published by the imperial insurance office, Berlin.)

Kind of associations.	Receipts.	Expenses.	Funds.
Trade associations:			
1890	$10,571,113,910	$8,733,864,818	.....
1891	12,813,421,152	10,353,125,664	$19,423,238,786
1892	15,470,000,000	12,138,000,000	24,038,000,000
Offices for state works:			
1890	457,768,962	457,768,963	.....
1891	577,825,206	577,825,206	.....
1892	714,000,000	714,000,000	.....
Total:			
1890	11,028,882,872	9,191,633,780	.....
1891	13,391,246,358	10,930,950,870	19,423,238,786
1892	16,184,000,000	12,852,000,000	24,038,000,000

If we bring the three laws under a common schedule *it appears,* according to Dr. Zacher's statistics for 1892, that the receipts and expenses under the three laws were as follows:

SUMMARY OF INSURANCE IN GERMANY FOR 1892.

(The round numbers are estimated, as the financial statement for 1892 was not yet settled, January, 1893.)

Persons insured, receipts, expenses, etc.	Insurance against:—		
	Sickness.	Accident.	Old age and invalidity.
Persons insured	a7,723,000	b18,000,000	c11,200,000
Persons relieved (d)	2,752,000	210,000	187,800
Receipts:			
Contributions of employers	$7,378,000.00	$12,852,000.00	$11,275,250.00
Contributions of employed	18,445,000.00	.....	11,275,250.00
Total	e31,416,000.00	e16,184,000.00	25,751,600.00
Expenditures:			
Benefits	22,610,000.00	7,735,000.00	f5,331,200.00
Administration	g1,175,600.00	g1,761,200.00	g1,066,240.00
Total	h29,512,000.00	h12,852,000.00	h25,751,600.00
Accumulate funds	i26,180,000.00	i24,038,000.00	i38,758,309.00
Benefit per case	8.35	44.03	f28.56
Charges per person	3.332	.714	f2.142

a. Persons employed for wages or salary in trade and commerce, partly in agriculture (forestry) and domestic service.

b. Persons employed in industry and agriculture (forestry) — not in commerce, handicrafts, and petty trades — including about 4,000,000 small farmers (with areas under 24.71 acres) and as many persons insured in Setaoineta or double employments.

c. Workers of all trades and servants, likewise (industrial and agricultural) officials and commercial assistants with regular year's earnings up to $476.

d. Persons having received legal assistance in money or in kind (free medical or hospital treatment, medicines, etc.) provided by the workmen's insurance laws for disability caused by sickness, accident, invalidity, old age.

e. Including balance on hand at the commencement of the year, and interest on investments.

f. Including state subsidies.

g. Including the current costs of the whole organization.

h. Including the year's addition to the funds.

i. Provided by law in order to secure the payments named.

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STATISTICS OF ACCIDENT INSURANCE IN 1891, BY INDUSTRIES.

(From official statistics for 1891, published by the imperial insurance office, Berlin.)

Industry.	Establishments.	Persons insured.	Accidents compensated.	Receipts.	Expense.	Funds.
Mining	2,075	421,137	13,255	$1,667,818	$1,549,143	$3,646,979
Quarrying	15,383	253,250	4,297	456,864	369,030	783,152
Mechanical instrument making	2,258	64,172	665	80,158	57,874	125,440
Iron and steel	23,834	592,783	15,104	1,500,961	1,336,249	2,834,051
Metal work (precious and other metals)	4,319	101,966	990	105,518	83,773	184,199
Musical instrument making	824	23,557	188	18,565	18,216	28,154
Glass	716	56,357	510	55,513	50,431	95,011
Pottery	897	60,455	381	41,294	30,678	63,217
Brick and tile making	12,547	254,102	2,278	252,186	212,108	371,120
Chemical industries	5,273	101,134	2,410	303,276	258,024	524,808
Gas and water works	1,138	26,873	463	81,323	63,831	132,487
Textile trades	9,342	601,764	6,106	461,684	388,710	846,332
Silk	666	43,899	160	17,770	14,220	27,433
Paper making	1,287	58,489	1,718	149,561	131,711	278,612
Stationery	2,072	60,668	553	69,074	40,456	87,960
Leather work	2,424	46,289	657	72,223	62,654	112,051
Wood cutting and carving	34,442	214,596	6,295	475,198	445,705	839,319
Flour mills	37,637	86,439	2,729	316,541	248,685	527,784
Food purveying	11,738	58,161	977	80,938	75,864	122,313
Sugar refining	464	99,097	1,665	160,533	141,581	296,947
Distilling	8,028	41,569	913	107,181	84,424	166,736
Brewing	5,635	72,517	3,142	385,920	343,616	931,257
Tobacco	4,708	109,111	176	26,297	16,973	34,622
Clothing	2,967	104,748	540	41,825	38,733	56,207
Chimney sweeping	3,215	5,804	52	16,708	10,527	20,505
Building	120,118	992,735	17,259	1,918,254	1,824,304	3,110,244
Printing	4,295	69,806	424	51,249	42,202	76,279
Railway transportation (private)	116	26,886	568	72,721	72,721	152,911
Tramways	197	31,853	218	36,510	29,360	77,843
Packing and despatch of goods	19,599	80,348	2,527	481,375	289,681	518,571
Driving of vehicles	26,551	69,397	2,181	265,857	232,121	329,838
River navigation	16,276	55,157	1,039	149,387	123,664	225,686
Maritime navigation	1,711	43,300	740	105,443	87,827	132,952
Well digging	12,504	164,993	3,066	1,346,307	265,084	1,179,738
Agriculture and forestry	4,776,520	12,289,415	34,338	1,463,334	1,334,888	572,668

Dr. Zacher says that already "in the few years since these measures became law nearly a thousand millions of marks ($238,000,000)—almost one-half contributed by the employers—have been expended in the interests of the workingmen." He says of the old age and invalidity insurance alone that eventually 1,500,000 persons will get annuities to the amount of 330,000,000 marks ($78,500,000).

It is true that the number of recipients reaches the high figure 43,149,800 (2,752,000 sick causes, 210,000 accidents, and 187,800 old age pensioners). If the whole amount spent in relief, $35,676,200, is divided among so vast a number, the average benefit per person is exceedingly small—a trifle over $11 each. The amount does not, however, affect the nature of the problem. Even if $100,000,000 are eventually distributed under these three laws, where is the ultimate burden finally to fall?

If the larger portion of the burden could be kept upon the shoulders of the well to do and the machinery of expenses economically administered, clearly the insured working classes could maintain by their wage a higher standard of comfort.

The difficulty of the answer begins at this point. The relation of direct to indirect taxation alone makes anything like a definite answer impossible, if no other difficulty whatever were in the way. It is maintained by some authorities that the different uses to which direct and indirect taxes are put prove that the indirect taxes will have to take the larger burden of such portion of the insurance fund as is brought into the question at issue.

REMEDIES.

Let us turn our attention for a moment to remedies. The German plan of insurance against sickness, accidents, invalidism and old age in industrial pursuits has paid out during the last twenty years, ending in 1903, $802,000,000. Of this total sum, $555,750,000 was paid on account of sick insurance, $232,750,000 on account of accidents and $13,500,000 on account of invalidism and old age.

To the fund necessary to make these payments the employer contributed $424,500,000. The employes contributed $377,000,000, and the Imperial Government paid the entire cost of administration and a small portion of the funds necessary to take care of invalidism and old age.

The general rules are, in respect to the raising of the insurance fund, that the employes shall pay two-thirds of the fund necessary to take care of sick insurance which lasts for thirteen weeks, and the employers pay one-third. In the case of accident insurance the employers pay substantially all of it. In the case of invalidism and old age insurance the Imperial Government pays $12.50 for each person injured and the remainder of the fund is paid half and half by the employers and employes.

The German plan in 1907 had 27,172,000 workmen insured against sickness, accidents and old age out of a population of 60,000,000 of people.

The English plan under which 13,000,000 workmen are insured may be briefly stated. In case of death, the compensation paid is at most three years' wages of 300 pounds $1,460, with a minimum payment of three years' wages of 150 pounds ($730).

In case of disability which lasts longer than one week, the compensation paid is one-half week's average wage, not to exceed $4.87, as long as the disability lasts. Responsibility for the payment of the compensation rests solely on the employers and they are not required to insure. In both the German and English plan the rules of contributory negligence, assumption of risk, and the fellow servant rules are abolished, and the only kind of negligence recognized is that of malicious negligence on the part of the employer or the employee.

Some fundamental facts which seem to be overlooked in almost every instance, are worthy of consideration. Even the statistics of the United States, in so far as they are available, show that over fifty per cent of all industrial accidents are due to the inherent dangers and risks of the industrial business, that not to exceed twenty per cent of all these accidents are due or attributable entirely to the negligence of the employer, and at most twenty-five per cent are attributable solely to the negligence of the employee.

Now the common law does not presume to furnish a plan of relief except where it can be proven that the defendant is at fault. Therefore, the common law does not presume to furnish any relief for something like from sixty to eighty per cent of all persons injured in the United States, and the best estimate of the number of persons injured and killed in industrial accidents in 1909 is 536,000 people. What does this mean? Let us see.

In the battle of Gettysburg, which lasted three days in actual fighting, there were killed, wounded and missing 43,500 soldiers. If therefore, you were to have a battle of Gettysburg in one of each of twelve divisions of the United States, one in one month, say in the neighborhood of Boston, one the next month near New York City, one the third month in the vicinity of Cincinnati, and then successively at Atlanta, New Orleans, St. Louis, Minneapolis, Pittsburg, Denver, Portland and San Francisco you would not create quite the damage and destruction which takes place yearly in the industrial activity of the United States, and for all of that destruction, the common law does not pretend to furnish any remedy or relief, except in those cases in which the employer is negligent; and the best figures indicate that these do not exceed twenty per cent of all injuries. Even the part of that relief which reaches the employee is about one-fifth of what the employer pays out to protect

himself against the liability arising out of injuries to workingmen in industrial accidents.

And so the purpose of the Commission is to gather as much information as possible by public hearings and otherwise, by investigation of the experience of foreign countries and the work of similar commissions in this country; to formulate some new plan of compensation of workmen injured in industrial accidents, and perhaps we shall say without regard to negligence, unless it should be for malicious negligence on the part of the employer or employee.

The compensation should be at hand and should be paid direct to the employee without any waste on account of attorney fees and liability insurance protection.

At the conference of the Employers' Liability Commissions of Massachusetts, Connecticut, New York, New Jersey, Ohio, Illinois, Wisconsin, Minnesota, Montana and the Federal Commission, held in the LaSalle Hotel, Chicago, November 10th, 11th and 12th, we agreed upon a tentative uniform Employers' Compensation Act or plan of insurance of workmen against injuries arising out of industrial accidents. The record of this conference will be published by the Federal Government.

CONSTITUTIONAL QUESTIONS INVOLVED.

It is not the proper time for me as chairman of the commission to outline specifically my position on the various legal questions involved in the enactment, by our legislature of a Compensation Act or Plan of Insurance of Workmen, against injuries arising out of industrial accidents.

The common law knows no remedy except that based upon the fault of the defendant. Can the Legislature displace actions based upon the fault of the employer, which compensates less than one in eight of the workmen injured, and those only in one-fifth part adequately, by a compensation act or plan of insurance which will compensate all employes injured, reasonably, with practically no waste and to the great betterment of the laboring forces of the nation and the social improvement of the masses? With proper safeguards and limitations, I maintain that the Legislature can properly enact such a law, on the same ground that you maintain the poor laws and compulsory education. The life of the people constantly changes. As in medicine there are new diseases and new remedies must be discovered, likewise for injuries arising in industrial accidents we must find in the police power of the constitution of the state the remedy to correct this great social injustice. The legislature has a right to narrow and take away common law actions and add new statutory causes of actions. The Norris Bill itself illustrates these points, (and I cite numerous decisions). By restricting and narrowing the three common law defenses, the act en-

larges the causes of action of the plaintiff and by introduction of "simple implements" it denies persons injured by a pitchfork, for instance, a right to sue, though the master be negligent.

The Legislatures of the states under the due excercise of the police powers have the right to enact a compensation act with proper limitations, without infringing on the authority of the Federal Constitution. Standards of constitutionality change with the changes of the social and economic life of the people.

Below is given a brief summary of the decisions of the courts in regard to the constitutional questions raised by the substitution of a compensation act or obligatory state insurance against industrial accidents without regard to negligence.

SUMMARY OF DECISIONS.

1. A statute is not necessarily unconstitutional because it places an absolute or insurer's liability upon persons engaged in certain occupations. Bertholf v. O'Reilly, 74 N. Y. 509; Marvin v. Trout, 199 U. S. 212; Chicago, Rock Island & Pacific Railway Co. v. Zernecke, 183 U. S. 582; St. Louis & San Francisco Railroad Co. v. Mathews, 165 U. S. 1; Jones v. Brim, 165 U. S. 180. And see Jones v. Great Southern Hotel Co., 86 Fed. 370.

2. A statute is not unconstitutional because it changes the common law or imposes a liability unknown to the common law. Bertholf v. O'Reilly, 74 N. Y. 509; Munn v. Illinois, 94 U. S. 113; Rhodes v. Sperry, 193 N. Y. 223; Adair v. U. S. 208 U. S. 161; Missouri Pacific Railway Co. v. Mackay, 127 U. S. 205; Ivy v. Western Union Telegraph Co., 165 Fed. 391. And see The Employers' Liability Case, 207 U. S. 463; Martin v. Pittsburg & Lake Erie Railroad Co., 203 U. S. 284; St. Louis & San Francisco Railroad Co. v. Mathews, 165 U. S. 1; Johnstone v. Fargo, 184 N. Y. 379. A. T. & C. Ry. Co. v. Mathews, 174 U. S. 96, 99, 104; Brewster on Conveyancing, Sec. 436.

3. A statute is not necessarily unconstitutional because it restrains the liberty of contract. McLean v. State of Arkansas, 211 U. S. 539; Wilmington v. Fulton, 205 U. S. 60; Knoxville Iron Co. v. Harrison.

(1) Von Iehring Der Geist des Roemischen Rechts Vol. I. 183 U. S. 13; Holden v. Hardy, 169 U. S. 366; Vroom v. N. Y. C. & H. R. R. R. Co., 129 App. Div. 858. But see The Employers' Liability Case, 207 U. S. 463 (dissenting opinion of Moody, J.); Adair v. United States, 208 U. S. 161; Lochner v. New York, 198 U. S. 45; Allegeyer v. Louisiana, 165 U. S. 578; Goldfield Consolidated Mines Co. v. Goldfield, 159 Fed. 560; Muller v. Oregon, 208 U. S. 412 and Holden v. Hardy, 169 U. S. 366; 2 Pollock and Maitland's History of English Law, Ind. Ed., p. 232; Ritchie v. Wayman et al., 244 Ill. 509 and 2 Bryce Amr. Cons., p. 410.

4. A provision in a statute imposing liabilities upon employers and making void all contracts between employers and employees by which the latter would be deprived of the benefit of the statute, does not seem to be unconstitutional. Employers' Liability Case, 207 U. S. 463; Vroom v. N. Y. C. & H. R. R. R. Co., 129 App. Div. 858; Minnesota Iron Co. v. Kline, 199 U. S. 593.

5. A statute is not unconstitutional merely because it applies to large employers and not to small employers. McLean v. Arkansas, 211 U. S. 539; St. Louis Consolidated Coal Co. v. Illinois, 185 U. S. 203.

6. The courts seem to have shown some slight tendency to recognize the inequality of employes with their employers in regard to contracts. Knoxville Iron Co. v. Harrison, 183 U. S. 13; Johnston v. Fargo, 184 N. Y. 379. But see Adair v. United States, 208 U. S. 161; People v. Williams, 189 N. Y. 131; Tiedeman on State and Federal Control of Persons and Property, pp. 315-326. Casper v. Lewin, 109 So. Rep. 667. Dayton Iron Co. v. Barton, 183 U. S. p. 23.

7. Statutes restricting the number of hours of labor are not unconstitutional if they are a proper exercise of the police power, as in the case of, (a) Mines—Holden v. Hardy, 169 U. S. 366. (b) Laundries—Soon Hing v. Crowley, 113 U. S. 70. (c) Railways—People v. Phyfe, 136 N. Y. 554. (d) Bakeries—(contra) Lochner v. New York, 189 U. S. 45.

8. Statutes are not unconstitutional because they require persons engaged in certain occupations to take out licenses, if they are a proper exercise of the police power. People, etc. v. Warden, et., 144 N. Y. 529; Gundling v. Chicago, 177 U. S. 183; Grainger v. Douglas Park Jockey Club, 148 Fed. 513. But see Bossette v. people 62 N. E. 215.

9. A contract by which an employee exempts his employer from legal liability for injuries sustained is void as against public policy. Johnston v. Fargo, 184 N. Y. 379.

Finally to quote from Professor Freund in his work on the Police Power:

"The principle that inevitable loss should be borne, not by the person on whom it may happen to fall, but by the person who profits by the dangerous business to which the loss is incident, embodies a very intelligible idea of justice. The system being responsible for the loss, why should it not be constitutional to distribute the loss among the beneficiaries of the system? In a large sense the community is certainly interested in averting sudden and unexpected losses as well as the destitution following from sickness and disease, and the distribution of these losses over a large number through insurance is a legitimate end of governmental policy. There is no warrant for denying the State the power to adopt compulsory measures for the purpose."

Freund on Police Power, Sec. 435, 437.

CONCLUSION.

The entire problem which has been presented to the Employers' Liability Commission of Ohio, to devise a compensation act or a plan of insuring employes against loss of wages arising out of industrial accidents, which we are discussing today, may be formulated in a single paragraph by quoting from the message of Emperor William I to the Reichstag on November 17, 1881, as he spoke by the hand of Prince Bismarck:

"We regard it as our imperial duty once more to lay upon the heart of the Reichstag the promotion of the welfare of the workmen, and we would look back with all the more satisfaction on all of the successes with which God has visibly blessed our reign, if we might carry with us the consciousness that we could leave behind us new and permanent assurance of inward peace and to those who need help greater security and comfort to which they have a claim. In our efforts directed to that end we are sure of the co-operation of all of the federated states and we look for the support of the Reichstag without regard to parties. First of all to this end a sketch of a law relating to the insurance of workmen against loss by accidents in industry has been prepared. By its side and supplementing it will be offered a method of organizing sickness insurance funds. Likewise those who by reason of age or disability have become unable to earn a living have a well founded claim upon the community for a larger measure of state care than has hitherto been given them. To find the right way and means for this care is a difficult task, but it is one of the highest duties of every state, which rests upon the Christian life of the people. The close union of the real forces of this people's life with incorporated societies under state protection and state help, will, as we hope, make possible the solution of problems for which the power of the government alone would not in the same degree be adequate."[1]

On February 19, 1907, Emperor William II, in his throne speech before the newly elected Reichstag confirmed the policy of his grandfather, saying:

"That legislation rests upon the principle of social duty to the working classes and is therefore independent of parties. The federated states are firmly decided to carry out this social work in the exalted spirit of Emperor William the Great.[25]

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[1] W. F. Willoughby's Workingmens' Insurance (1898).

[25] C. R. Henderson's Hist. of Industrial Ins., p. 6.

APPENDIX I.

COMPENSATION ACTS IN THE UNITED STATES.

We have in the United States two examples of compensation acts. One of these was adopted by the state of New York; the other by Montana. The former was recommended by the Employers' Liability Commission of New York. This act has been tested and held to be constitutional. On the following pages we present the full text of the laws of the two states on this subject, together with the decision on the New York law.

THE EMPLOYERS' LIABILITY LAW OF NEW YORK STATE.

Article 14 of the Labor Law (Chapter 31 of the Consolidated Laws); Formerly Chapter 600 of the Laws of 1902.

ARTICLE 14.

EMPLOYERS' LIABILITY.

SECTION 200. Employers' liability for injuries.
201. Notice to be served.
202. Assumption of risks; contributory negligence, when a question of fact.
203. Defense; insurance fund.
204. Existing rights of action continued.

Section 200. Employers' liability for injuries. When personal injury is caused to an employee who is himself in the exercise of due care and diligence at the time;

1. By reason of any defect in the condition of the ways, works or machinery connected with or used in the business of the employer which arose from or had not been discovered or remedied owing to the negligence of the employer or of any person in the service of the employer and intrusted by him with the duty of seeing that the ways, works or machinery were in proper condition;

2. By reason of the negligence of any person in the service of the employer intrusted with and exercising superintendence whose sole or principal duty is that of superintendence, or in the absence of such superintendent, or any person acting as superintendent with the authority or consent of such employer;

The employee, or in case the injury results in death, the executor or administrator of a deceased employee who has left him surviving a husband, wife or next of kin, shall have the same right of compensa-

tion and remedies against the employer as if the employee had not been an employee of nor in the service of the employer nor engaged in his work. The provisions of law relating to actions for causing death by negligence, so far as the same are consistent with this article, shall apply to an action brought by an executor or administrator of a deceased employee suing under the provisions of this article.

201. Notice to be served. No action for recovery of compensation for injury or death under this article shall be maintained unless notice of the time, place and cause of the injury is given to the employer within one hundred and twenty days and the action is commenced within one year after the occurrence of the accident causing the injury or death. The notice required by this section shall be in writing and signed by the person injured or by some one in his behalf, but if from physical or mental incapacity it is impossible for the person injured to give notice within the time provided in this section, he may give the same within ten days after such incapacity is removed. In case of his death without having given such notice, his executor or administrator may give such notice within sixty days after his appointment, but no notice under the provisions of this section shall be deemed to be invalid or insufficient solely by reason of any inaccuracy in stating the time, place or cause of the injury if it be shown that there was no intention to mislead and that the party entitled to notice was not in fact misled thereby. The notice required by this section shall be served on the employer, or if there is more than one employer, upon one of such employers, and may be served by delivering the same to or at the residence or place of business of the person on whom it is to be served. The notice may be served by post by letter addressed to the person on whom it is to be served, at his last known place of residence or place of business, and if served by post shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post. When the employer is a corporation, notice shall be served by delivering the same or by sending it by post addressed to the office or principal place of business of such corporation.

202. Assumption of risk; contributory negligence, when a question of fact. An employee by entering upon or continuing in the service of the employer shall be presumed to have assented to the necessary risks of the occupation or employment and no others. The necessary risks of the occupation or employment shall, in all cases arising after this article takes effect, be considered as including those risks, and those only, inherent in the nature of the business which remain after the employer has exercised due care in providing for the safety of his employees, and has complied with the laws affecting or regulating such business or occupation for the greater safety of such employees. In action maintained for the recovery of damages for personal injuries to an employee received after this article takes effect, owing to any cause

for which the employer would otherwise be liable, the fact that the employee continued in the service of the employer in the same place and course of employment after the discovery by such employee, or after he had been informed of the danger of personal injury therefrom, shall not as a matter of law, be considered as an assent by such employee to the existence or continuance of such risks of personal injury therefrom, or as negligence contributing to such injury. The question whether the employee understood and assumed the risk of such injury, or was guilty of contributory negligence, but his continuance in the same place and course of employment with knowledge of the risk of injury, shall be one of fact, subject to the usual power of the court in a proper case to set aside a verdict rendered contrary to the evidence. An employee, or his legal representative, shall not be entitled under this article to any right of compensation or remedy against the employer in any case where such employee knew of the defect or negligence which caused the injury and failed, within a reasonable time, to give, or cause to be given, information thereof to the employer, or to some person superior to himself in the service of the employer who had intrusted to him some general superintendence, unless it shall appear on the trial that such defect or negligence was known to such employer, or superior person, prior to such injuries to the employee.

203. Defense; insurance fund. An employer who shall have contributed to an insurance fund created and maintained for the mutual purpose of indemnifying an employee for personal injuries, for which compensation may be recovered under this article, or to any relief society or benefit fund created under the laws of this State, may prove in mitigation of damages recoverable by an employee under this article such proportion of the pecuniary benefit which has been received by such employee from such fund or society on account of such contribution of the employer, as the contribution of such employer to such fund or society bears to the whole contribution thereto.

204. Existing rights of action continued. Every existing right of action for negligence or to recover damages for injuries resulting in death is continued and nothing contained in this article shall be construed as limiting any such right of action, nor shall the failure to give the notice provided for in section two hundred and one of this article be a bar to the maintenance of a suit upon any such existing right of action.

THE RAILWAY LIABILITY LAW OF NEW YORK STATE.

Section 42-A of the Railroad Law (Chapter 39 of the General Laws) Added by Chapter 657 of the Laws of 1906.

42-A. In all actions against a railroad corporation, foreign or domestic, doing business in this State, or against a receiver thereof, for personal injury to, or death resulting from personal injury of any person, while in the employment of such corporation, or receiver, arising from the negligence of such corporation or receiver or any of its or his officers or employees, every employee, or his legal representatives, shall have the same rights and remedies for an injury, or for death, suffered by him, from the act or omission of such corporation or receiver or of its or his officers or employees, as are now allowed by law, and, in addition to the liability now existing by law, it shall be held in such actions that persons engaged in the service of any railroad corporation, foreign or domestic, doing business in the State, or in the service of a receiver thereof, who are entrusted by such corporation or receiver, with the authority of superintendence, control or command of other persons in the employment or such corporation or receiver, or with authority to direct or control any other employee in the performance of the duty of such employee, or who have, as a part of their duty, for the time being, physical control or direction of the movement of a signal, switch, locomotive engine, car, train or telegraph office, are vice-principals of such corporation or receiver, and are not fellow-servants of such injured or deceased employee. If an employee, engaged in the service of any such railroad corporation, or of a receiver thereof, shall receive any injury by reason of any defect in the condition of the ways, works, machinery, plant, tools or implements, or of any car, train, locomotive or attachment thereto belonging, owned or operated, or being run and operated by such corporation or receiver, by reasonable and proper care, tests or inspection, such corporation or receiver shall be deemed to have had knowledge of such defect before and at the time such injury is sustained; and when the fact of such defect shall be proved upon the trial of any action in the courts of this State, brought by such employee or his legal representative, against any such railroad corporation or receiver, on account of such injuries so received, the same shall be prima facie evidence of negligence on the part of such corporation or receiver. This action shall not effect actions or causes of action now existing; and no contract, receipt, rule, or regulation between an employee and a railroad corporation or receiver shall exempt or limit the liability of such corporation or receiver from the provisions of this section.

STATE OF NEW YORK.

(Compensation Act.)

CHAP. 674.

AN ACT to amend the labor law, in relation to workmen's compensation in certain dangerous employments.

Became a law June 25, 1910, with the approval of the Governor. Passed, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Chapter thirty-six of the laws of nineteen hundred and nine, entitled "An act relating to labor, constituting chapter thirty-one of the consolidated laws," is hereby amended by inserting therein a new article, to be article fourteen-a thereof, to read as follows:

ARTICLE 14-A.

WORKMEN'S COMPENSATION IN CERTAIN DANGEROUS EMPLOYMENTS.

SECTION 215. Application of article.
216. Definitions.
217. Basis of liability.
218. Rights of action not affected.
219. Notice of accident.
219-a. Scale of compensation.
219-b. Medical examinations.
219-c. Incompetency of workman.
219-d. Settlement of disputes.
219-e. Preferences and exemptions.
219-f. Attorneys' liens.
219-g. Liability of principal contractors.

SECTION 215. *Application of article.* This article shall apply only to workmen engaged in manual or mechanical labor in the following employments, each of which is hereby determined to be especially dangerous, in which from the nature, conditions or means of prosecution of the work therein, extraordinary risks to the life and limb of workmen engaged therein are inherent, necessary or substantially unavoidable, and as to each of which employments it is deemed necessary to establish a new system of compensation for accidents to workmen.

1. The erection or demolition of any bridge or building in which there is, or in which the plans and specifications require, iron or steel frame work.

2. The operation of elevators, elevating machines or derricks or hoisting apparatus used within or on the outside of any bridge or building for the conveying of materials in connection with the erection or demolition of such bridge or building.

3. Work on scaffolds of any kind elevated twenty feet or more above the ground, water, or floor beneath in the erection, construction, painting, alteration or repair of buildings, bridges or structures.

4. Construction, operation, alteration or repair of wires, cables, switchboards or apparatus charged with electric currents.

5. All work necessitating dangerous proximity to gunpowder, blasting powder, dynamite or any other explosives, where the same are used as instrumentalities of the industry.

6. The operation on steam railroads of locomotives, engines, trains, motors or cars propelled by gravity or steam, electricity or other mechanical power, or the construction or repair of steam railroad tracks and road beds over which such locomotives, engines, trains, motors or cars are operated.

7. The construction of tunnels and subways.

8. All work carried on under compressed air.

SECTION 216. *Definitions.* The words, "employer," "workman," and "employment," or their plurals, used in this article, shall be construed to apply to all the employments above described.

SECTION 217. *Basis of liability.* If, in the course of any of the employments above described, personal injury by accident arising out of and in the course of the employment after this article takes effect is caused to any workman employed therein, in whole or in part, or the damage or injury caused thereby is in whole or part contributed to by

a. A necessary risk or danger of the employment or one inherent in the nature thereof; or

b. Failure of the employer of such workman or any of his or its officers, agents or employees to exercise due care, or to comply with any law affecting such employment; then such employer shall, subject as hereinafter mentioned, be liable to pay compensation at the rates set out in section two hundred and nineteen-a of this title; provided that the employer shall not be liable in respect of any injury which does not disable the workman for a period of at least two weeks from earning full wages at the work at which he was employed, and provided that the employer shall not be liable in respect of any injury to the workman which is caused in whole or in part by the serious and willful misconduct of the workman.

SECTION 218. *Rights of action not affected.* The right of action for damages caused by any such injury, at common law or under any statute in force on January one, nineteen hundred and ten, shall not be affected by this article, and every existing right of action for negligence or to recover damages for injuries resulting in death is continued, and nothing in this article shall be construed as limiting such right of action, but in case the injured workman, or in event of his death his executor or administrator, shall avail himself of this article, either by accepting any compensation hereunder in accordance with section two hundred and

nineteen-a hereof or by beginning proceedings therefor in any manner on account of any such injury, he shall be barred from recovery in and deemed thereby to have released every other action at common law or under any other statute on account of the same injury after this article takes effect. In case after such injury the workman, or in the event of his death his executor or administrator, shall commence any action at common law or under any statute other than this article against the employer therefor he shall be barred from all benefit of this article in regard thereto.

SECTION 219. *Notice of accident.* No proceedings for compensation under this article shall be maintained unless notice of the accident as hereinafter provided has been given to the employer as soon as practicable after the happening thereof and before the workman has voluntarily left the employment in which he was injured, and during such disability, but no want or defect or inaccuracy of a notice shall be a bar to the maintenance of proceedings unless the employer proves that he is prejudiced by such want, defect or inaccuracy. Notice of the accident shall state the name and address of the workman injured, the date and place of the accident, and in simple language the physical cause thereof, if known. The notice may be served personally or by sending difference between the amount of the average weekly earnings of the workman before the accident and the average weekly amount which he is earning or is able to earn in the same employment or otherwise after the accident, but shall amount to one-half of such difference. In no event shall any compensation paid under this article exceed the damage suffered, nor shall any weekly payment payable under this article in any event exceed ten dollars a week or extend over more than eight years from the date of the accident.

SECTION 219-b. *Medical examinations.* Any workman entitled to receive weekly payments under this article is required, if requested by the employer, to submit himself for examination by a duly qualified medical practitioner or surgeon provided and paid for by the employer, at a time and place reasonably convenient for the workman, within three weeks after the injury, and thereafter at intervals not oftener than once in six weeks. If the workman refuses to submit to such examination, or obstructs the same, his right to weekly payments shall be suspended until such examination has taken place, and no compensation shall be payable during or for account of such period.

SECTION 219-c. *Incompetency of workman.* In case an injured workman shall be mentally incompetent at the time when any right or privilege accrues to him under this article, a committee or guardian of the incompetent appointed pursuant to the law may, on behalf of such incompetent, claim and exercise any such right or privilege with the same force and effect as if the workman himself had been competent and had claimed or exercised any such right or privilege; and no

limitation of time in this article provided for shall run so long as said incompetent workman has no committee or guardian.

SECTION 219-d. *Settlement of disputes.* Any question which may arise under this act shall be determined either by agreement or by arbitration as provided in the code of civil procedure or by an action at law as herein provided. In case the employer fail to make compensation as herein provided, the injured workman, or his committee or guardian, if such be appointed, or his executor or administrator, may then bring an action to recover compensation under this article in any court having jurisdiction thereof, or in any court which would have had jurisdiction of an action for recovery of damages for negligence for the same injury between the same parties. This article however shall not be construed as extending the jurisdiction of any such court to award judgment for an amount greater than now allowed by law. Such action shall be conducted in the same manner as actions at law for the recovery of damages for negligence. The judgment in such action if in favor of the plaintiff shall be for a sum equal to the amount of payments then due and prospectively due under this article. Such action must be commenced within six months after the happening of the accident or in case of the death of the workman by such accident within six months after the appointment of his legal representative in this state, or in the event of his physical incapacity, within six months after the removal thereof, or in the event of weekly payments by the employer hereunder, within six months after such payments have ceased. In such action by an executor or administrator the judgment may provide the proportions of the award or the costs to be distributed to or between the several dependents. If such determination is not made it shall be determined by the surrogate's court, in which such executor or administrator is appointed, in accordance with this article, on petition of any party interested on such notice as such court may direct.

SECTION 219-e. *Preferences and exemptions.* Any person entitled to weekly payments under this article against any employer shall have the same preferential claim therefor against the assets of the employer as allowed by law for a claim by such person against such employer for unpaid wages or personal services. Weekly payments due under this article shall not be assignable or subject to levy, execution or attachment.

SECTION 219-f. Attorneys' liens. No claim of an attorney-at-law for any contingent interest in any recovery under this article for services in securing such recovery or for disbursements shall be an enforceable lien on such recovery, unless the amount of the same be approved in writing by a justice of the supreme court, or in case the same be tried in any court, by the justice presiding at such trial.

SECTION 219-g. *Liability of principal contractors.* If an employer who shall be the principal enters into a contract with an independent

contractor to do part of such employer's work, or if such contractor enters into a contract with a subcontractor to do all or any part of the work comprised in such contractor's contract with the employer, the said principal shall be liable to pay to any workman employed in the execution of the work any compensation under this article which he would have been liable to pay if that workman had been immediately employed by him; and where compensation is claimed from or proceedings are taken against the principal then, in the application of this article, references to the principal shall be substituted for references to the employer, except that the amount of compensation shall be calculated with reference to the earnings of the workman under the contractor or employer by whom he is immediately employed. Where such principal is liable to pay compensation he shall be entitled to be indemnified by any person who would have been liable to pay compensation to the workman independently of this section. Nothing in this section shall be construed as preventing a workman from recovering compensation under this article from the contractor or subcontractor, instead of the principal; nor shall this section apply in any case where the accident shall occur elsewhere than on, or in, or about the premises on which the principal has undertaken to execute the work or which are otherwise under his control or management.

SECTION 2. This act shall take effect September first, nineteen hundred and ten.

(Foregoing Act — Held Constitutional.)

SUPREME COURT—SPECIAL TERM.

ERIE COUNTY, September, 1910.

EARL IVES, *Plaintiff*, v. THE SOUTH BUFFALO RAILWAY COMPANY, *Defendant*.

DEMURRER TO DEFENDANT'S ANSWER.

THOMAS C. BURKE, *for Plaintiff;* CHARLES B. SEATS, *for Defendant*.

POUND, J. The answer challenges the constitutionality of chapter 674, Laws 1910, entitled "An act to amend the Labor Law in relation to workmen's compensation in certain dangerous employments." This chapter applies only to workmen engaged in manual or mechanical labor in certain employments declared by the act to be dangerous by reason of inherent, necessary or substantially unavoidable risks to life or limb, in which it is deemed necessary to establish a new system of compensation for accidents to workmen (sec. 215).

Among such employments is included:

6. "The operation on steam railroads or locomotives, engines, trains, motors or cars propelled by gravity or steam, electricity or other

mechanical power, or the construction or repair of steam railroad tracks and roadbeds over which such locomotives, engines, trains, motors or cars are operated" (sec. 215).

Plaintiff brings himself squarely under the provisions of this act by alleging facts that established, as admitted by the answer, that, while employed by defendant as a switchman, he was injured in the prosecution of his work, without negligence on the part of the defendant, and "without serious or wilful misconduct" on his part, but solely by reason of a necessary risk or danger of his employment, or one inherent in the nature thereof (sec. 217).

Prior to the enactment of the statute above cited he would have been without remedy. By virtue of its provisions he is entitled to recover according to a fixed scale of compensation without establishing that the employer is at fault in any way (sec. 219 a).

The plaintiff demurs to the answer on the ground that it is insufficient in law on its face.

This act is based on the Workmen's Compensation Act of England, and its enactment is due to the fact that the common law affords no available remedy for injuries occasioned by industrial accidents not attributable to the negligence of the employer.

Defendant maintains that, under our system of constitutional government, the incorporation into our law of the English law of workmen's compensation is beyond the powers of the Legislature. First, because the act in question deprives the defendant of liberty and property without due process of law, and denies it the equal protection of the laws in contravention of the Fourteenth Amendment of the United States Constitution, and article 1, section 6, of the Constitution of this State. Second, because it violates the right of trial by jury guaranteed by article 1, section 2 of the Constitution of this State. Third, because it limits the amount recoverable in actions to recover damages for injuries resulting in death in contravention of article 1, section 18, of the Constitution of this State.

It has well been said by Justice Brown of the Supreme Court of the United States, writing the opinion of the Court in Holden v. Hardy (169 U. S., 366, at p. 587), that "while the cardinal principles of justice are immutable, the methods by which justice is administered are subject to constant fluctuation, and the Constitution of the United States, which is necessarily and to a large extent inflexible and exceedingly difficult of amendment should not be so construed as to deprive the States of the power to so amend their laws as to make them conform to the wishes of the citizens as they may deem best for the public welfare without bringing them into conflict with the supreme law of the land."

It is well established that statutes applicable solely to railroads do not deny to railroads the equal protection of the laws. A classification

of "dangerous employments" for the purposes of the act must be upheld (Missouri R'y v. Mackay, 127 U. S., 205).

But the act is attacked chiefly because it imposes liability without fault. Our jurisprudence offers examples of legal *liability without fault,* and the deprivation of property without fault being attributable to its owner. The law of deodand was such an example. The *personification* of the ship in marine law is another. Other examples are offered in the common law liability of the husband for the torts of the wife, or liability of the master for the acts of his servant (The Osceola, 189 U. S., 158; Chicago, R. I. & P. R'y v. Zernecke, 183 U. S. 582).

In the case last cited a statute making railroad companies liable for all damages inflicted upon the person of passengers while being transported over its road, except in cases where the injury arose through the criminal negligence of the person injured, was upheld, primarily on the ground that the railroad company being a domestic corporation of Nebraska accepted with its incorporation the liability so imposed by the laws of the State and could not complain of it. But the court in its opinion cites with approval the opinion of the Supreme Court of Nebraska. That court said: "The legislation is justifiable under the police power of the State, so it has been held. It was enacted to make railroad companies insurers of the safe transportation of their passengers as they were of baggage and freight; and no good reason is suggested why a railroad company should be released from liability for injuries received by a passenger while being transported over its line while the corporation must respond for any damages to his baggage or freight."

The Legislature may alter or repeal the common law. It may create new offenses, enlarge the scope of civil remedies and foster responsibility for injuries upon persons against whom the common law gives no remedy (Bertholf v. O'Reilly, 74 N. Y., 504).

It would seem to follow that it might make those who employ workmen in dangerous callings insurers to some extent of the safety of such workmen. The common law imposed upon the employee entire responsibilities for injuries arising out of the necessary risks or dangers of the employment. The statute before us merely shifts such liability upon the employer. That the Legislature has the power to deal with the question of employers' liability on a basis other than fault is not clear beyond peradventure, but every presumption is in favor of the constitutionality of the act, nor do I find its constitutionality so doubtful as to warrant this court in holding that such action is not within the constitutional powers of the Legislature.

I have examined the authorities cited by the learned counsel for the defendant. They merely point out the shifting character of the border line between statutes which are upheld by the court as being a legitimate exercise of the legislative power to pass all manner of neces-

sary and wholesome acts for the protection and well-being of the public, although such acts may interfere with personal liberty and the right to do what one will with his own, and statutes which are held by the courts to interfere without warrant with the privilege of pursuing an ordinary trade or calling, and therefore to be unconstitutional and void.

In the case of Lockner v. New York (189 U. S. 45) the prevailing and dissenting opinions contain a full discussion of the principles underlying the decision of such cases. The court held in that case that there is no reasonable ground on the score of health for interfering with the liberty of the person or the right of free contract by determining hours of labor in the occupation of a baker. The same court had already held in Holden v. Hardy (supra) that there was reasonable ground on the score of health for interfering with the liberty of the person and the right of free contract in determining hours of labor in the occupation of workingmen in smelters. In the former case the public good did not, in the judgment of the court, require the restrictive legislation; in the latter case it did.

In the latter case Justice Brown says that "This court has not failed to recognize the fact that the law is to some extent a progressive science. Classes of persons, particularly those engaged in dangerous or unhealthful employments, have been found to be in need of additional protection."

As to the objection to the statute that it limits the amount recoverable in death cases, it is enough to say that it is for the plaintiff to make the claim of unconstitutionality in this regard, as it is the plaintiff alone who is prejudiced thereby, and it does not lie in the mouth of the defendant to raise this objection to the statute.

Demurrer overruled, with costs, and judgment absolute for the plaintiff directed on the pleadings, with costs.

STATE OF MONTANA.

CHAPTER 4.

ACCIDENT AND TOTAL DISABILITY INSURANCE FOR COAL MINERS.

(Act of March 4, 1909.)

SENATE BILL NO. 56.

An Act to create a State Accident Insurance, and Total Permanent Disability Fund, for coal miners and employees at coal washers in the State of Montana, and providing for the maintenance and management of the same; extending and defining the duties of the State Auditor; and fixing penalties for the violation of the provisions of this Act.

Be it enacted by the Legislature Assembly of the State of Montana:

SECTION 1. *To Whom Act Applies.* All workmen, laborers and employees employed in and around any coal mines, or in and around

any coal washers in which coal is treated, except office employees, superintendents and general managers, shall be insured in accordance with the provisions of this Act, against accidents occurring in the course of their occupations.

SECTION 2. *How Fund Raised—To Whom Paid.* All corporations, partnerships, associations or persons engaged in the business of operating any coal mine or coal washers in the State of Montana shall pay to the Auditor of the State, within five days after the monthly wages at the particular mine shall have been paid, one cent per ton on the tonnage of coal mined and shipped, or sold locally, or having been mined is ready for shipment or sale during the month for which the wages were paid; and all persons mentioned in Section 1 employed in and about coal mines shall allow to be deducted from their gross monthly earnings one percent thereof, the deduction to be made by the agent, manager, or foreman of any corporation, association, partnership, person or persons engaged in the business of operating any coal mine or coal washer, and paid to the State Auditor within five days after such monthly wages have been paid.

SECTION 3. *Agents to Report Tonnage Mined—Contracts Waiving Effect of Act Void.* The agent, manager, foreman, or accountant of any corporation, partnership, association, person or persons, engaged in mining coal in Montana, shall on or before the fifth day succeeding the pay day at his respective mine, make report under oath to the State Auditor as to the tonnage mined and subject to the payment of one cent per ton thereon; and stating the gross earnings subject to the one per cent deduction as provided in this Act, accompanied by a certified check in full for the amount of the tax provided in Section 2 of this Act. It shall be unlawful for any person, employer, employe, corporation, partnership, association or union to make any contract waiving, avoiding or affecting the full legal effect of this Act.

SECTION 4. *Receipt of Funds by Auditor—Duties—Liabilities of Sureties State Treasurer—Interest.* It is hereby made the duty of the State Auditor to receive all moneys as provided for in this Act, and to send the proper acknowledgement to the person making such remittance. The Auditor shall pay all moneys so received by him to the State Treasurer, who shall keep such sums in safe custody in a distinct fund to be known as the Employers and Employes Co-Operative Insurance and Total Permanent Disability Fund. The State Treasurer must invest the surplus of this fund in safe and convertible State, County or City bonds or bonds of the United States. All interest accruing from such investments shall be accredited to this insurance fund. The bond of the State Treasurer shall be liable for such funds, and it shall be his duty to keep accurate accounts of the receipts and disbursements of such money.

SECTION 5. *Payment of Death Claims—To Whom—Duty of Auditor—Personal Inquiries—How Compensation Paid.* The Auditor of State shall keep full statistics of the operation of this function of his department in the event of death by accident of an employe insured under this act, who shall have come to his death in the course of his employment and by causes arising therein. The Auditor of State upon being satisfied by adequate evidence of such death shall issue a warrent upon the State Treasurer to persons dependent upon the deceased, these warrants to issue in the following order:

(1) To surviving wife and child, or children, in equal shares, and if neither wife or child, or children be alive, then (2) *to surviving parents* who are dependent, or partially so, upon the deceased; if none, then (3.) *to such other relative of the deceased as survive him and are dependent upon him, in the sum of Three Thousand Dollars ($3,000.00).*

A workman receiving injuries which permanently incapacitate him from the performance of work shall receive a compensation monthly, not to exceed One Dollar ($1.00) a day for each working day. Compensation for permanent injury shall not be allowed until after the expiration of twelve weeks from the time such injuries were sustained, provided that the medical practitioner examines and pronounces the injury as being permanent, compensation may then be allowed from commencement of disability. The Auditor of State, however, may, when in his judgment he deems it advisable, use so much of the funds as is necessary in the procuring of a medical practitioner, for the purpose of examination or treatment under this Act, for such injuries as herein mentioned compensation shall continue during disability, or until settlement is affected as provided for in Section 9 of this Act. Total or permanent disability shall consist of the loss of both legs or both arms, the total loss of eye sight or paralysis, or other conditions incapacitating him from work, caused by accident, or injuries received during employment as specified by this Act; provided, that *if death,* as a result of the injury, *ensues at a period not longer than one year from date of accident the sum of Three Thousand Dollars ($3,000.00) shall be paid the deceased workman's dependents* as hereinbefore provided. The representatives of a foreigner, except the widow or dependent children, who were not living within the country at the time of the accident, shall have no claim for the compensation provided for in this Act. Such foreign person shall file their foreign address, if married, with the office of their employer with whom they are employed and duplicate thereof with the State Auditor, giving their wife's name and dependent children, and such other identification as may be required by the Auditor of State. *Loss of any Limb, or eye, caused by accident to a workman while employed as provided for in this Act, shall be compensated for in the sum of One Thousand ($1,000.00) Dollars,* provided, that in the event there shall be no funds available in the fund to pay the Auditor's warrant

when drawn the same shall draw interest out of the fund at the rate of ten per cent per annum until such warrant is called for payment by the Treasurer which shall be as soon as the fund is sufficient to pay the same with its interest then due.

SECTION 6. *Monthly Payments—Applications for.* Where a workman is entitled to monthly payments under this Act, he shall file with the Auditor of State his application for such, together with a certificate from the County physician of the County wherein he resides, attested before a Notary Public.

SECTION 7. *Fraudulent Claims—Duty of Auditor.* If any person or persons, company or corporation who is then paying into this insurance fund shall believe that any person or persons are obtaining, or having made application to obtain benefits hereunder improperly or fraudulently and shall file his written request that such person's claim be investigated, the State Auditor must upon the receipt of such request, request the Secretary of the State Board of Health to make an examinataion for the purpose of this Act and his certificate as to the condition of the person or persons with reference to their rights to benefit under this Act shall be conclusive evidence as to his condition.

SECTION 8. *Claimant Refusing to Submit to Examination—Effect.* If the workman refuses to submit himself to such examination, or in any way obstructs the same, his right to compensation under this Act shall be suspended until such examination takes place, and shall absolutely cease unless he submits for an examination within one month after being required to do so.

SECTION 9. *Monthly Payments—Redemption by Lump Sum—Amount.* When any monthly payment has been made to a workman for any period whatever, the liability under this Act, may on the application by, or on behalf of the workman, be redeemed by the payment of a lump sum, which in no instance shall be in excess of the amount specified as death indemnity, and all monthly payments made prior shall be deducted from such settlement.

SECTION 10. *Annual Report of Auditor—Plenary Power to Adjust Claims.* The Auditor of State shall report in January of each year to the Governor of the experience and business of this function of his department, and shall have plenary power to determine all disputed cases which may arise in its administration not herein provided for, and to recommend in his report the rates or premium necessary in order to preserve such fund, and shall order paid such indemnification as herein provided. He shall have power to define the insurance provisions of this Act by regulations not inconsistent therewith and shall prescribe the character of the monthly or other reports required of the parties liable hereunder and the character of the proofs of deaths, or to total permanent disability, and shall have power to make all other orders and rules necessary to carry out the true intent of this Act.

SECTION 11. *Release of Employer—Benefits Exempted—Suit—Forfeiture of Benefits.* No money paid or payable in respect of insurance or monthly compensation under this Act shall be capable of being assigned, charged, taken into execution or attached, nor shall the same pass to any other person by operation of law; and the acceptance of pecuniary benefit under the provisions of this Act shall operate to release the person or persons, corporation, partnerships, or associations causing such injuries or death for which benefits are so claimed, who shall have paid the assessment provided in Section 2 of this Act, and also the employer, officers and agents thereof from all liability and claim arising from such injuries or death. The commencement of a suit to recover for such injuries or death shall operate as a forfeiture of the right to benefit under this Act.

SECTION 12. *Violations of Provisions of Act—Penalties.* A manager, agent, foreman, accountant, person or persons who represent any corporation, partnership, association, person or persons, engaged in the mining or managing of any coal mines or coal washers in Montana, or person or persons liable for the payments herein provided for who shall violate the intent of this Act by inaccurate reports of tonnage of coal produced by them, or the earnings of employees in their employ or who in any manner hinders or obstructs the Auditor of State in ascertaining facts bearing upon any case provided for in this Act or who may refuse correctly to make out such reports as are required by this Act, or as requested by the Auditor of State, or submit to its provisions, when liable therefor, or who shall fraudulently obtain benefits hereunder shall be fined for each offense the sum of not less than One Hundred ($100.00) Dollars nor more than Five Hundred ($500.00) Dollars and imprisonment in the County jail for a period of not less than one month nor more than six months, or by both such fine and imprisonment. The proceeds of all fines shall be forwarded to the State Treasurer and by him credited to the Insurance Fund.

SECTION 13. *Act Takes Effect—When.* This Act to be in full force and effect from and after the first day of October, nineteen hundred and ten, benefits to commence four months thereafter.

(Approved March 4, 1909.)

APPENDIX II.

WORKINGMEN'S INSURANCE IN GERMANY.

(From "Workingmen's Insurance in Europe," by Lee K. Frankel and Miles M. Dawson.)

The most striking fact in the remarkable industrial advance made by Germany during the last half century is the improved condition of the great body of its working people. On all sides are evidences of

greater effectiveness, contentment and prosperity. Many causes have undoubtedly contributed to this end, but perhaps the most important has been the fostering care of the government. It has met the requirements of its people in an orderly and businesslike manner, looking upon their occupations as both social and individual in character. In nothing is this attitude better shown than in the comprehensive system of insurance legislation, the beginning of which was made a quarter of a century ago.

At the close of the war with France, the attention of the government was directed to the adjustment of the new conditions which the unforeseen industrial development had brought about. Socialism of the revolutionary type was everywhere making rapid strides among the working classes. To check these forces of discontent, as well as to meet the legitimate demands of the people, Bismarck, with remarkable far-sightedness, presented his plan of obligatory insurance of workingmen as a matter of civic duty. This embraced three forms of workingmen's insurance; namely, against sickness, accident and invalidity. In the short period of nine years, 1881-1889, every detail of this comprehensive scheme was put into operation. Legislation so far-reaching in its consequences had never before been attempted. Though at the time regarded as revolutionary in character, it has served the country even better than its author dreamed possible. Now at the close of a period of twenty-five years, it is recognized as the most effective instrument for the protection of the great body of the people in the important exigencies of life; and its merits are warmly appreciated by all who have the welfare of the nation at heart.

The wide sphere of its usefulness is shown by the summary of insurance statistics for 1906 in Table 14. In that year, the population of Germany was 61,200,000, of whom no less than 15,400,000, or more than one in four, were wage-earners.

It must not be supposed, however, that the system inaugurated in 1883, through the efforts of Bismarck, was the creation of any one man or was imposed upon a people unprepared for it. On the contrary, it was the last step in a long historical process in which we find blended the struggle of the working people and the legislative policy of the ruling classes, and was based on political principles matured through decades of reflection and discussion.

TABLE 14—SUMMARY OF ACCIDENT, SICKNESS, AND INVALIDITY AND OLD AGE INSURANCE STATISTICS, 1906.

Losses, Receipts, etc.	Against accident.	Against sickness.	Against invalidity and old age.
Persons insured	19,227,213	12,408,706	14,142,700
Claimants paid	1,076,200	4,820,900	1,324,000
	(Marks)	(Marks)	(Marks)
Receipts*	189,708,567	314,461,891	263,340,791
From employers	166,973,578	95,510,006	85,063,085
From Workmen	166,973,578	205,568,399	85,063,085
Disbursements, total	165,964,271	282,487,163	182,355,360
For payment of claims	143,161,276	266,347,487	166,039,147
For expenses	22,802,995	16,139,676	16,316,213
Amount paid per claim	132.35	55.25	125.41
Total cost per person insured	8.63	22.77	15.50

*Total receipts for sickness, accidents and invalidity insurance, include sums from other sources, together with contributions of employers and employes.

TENDENCY TOWARD A COMPLETE AND CONNECTED SYSTEM OF INSURANCE FOR WORKINGMEN*.

To insurance against sickness, accidents, invalidity and old age, which has been in force for more than twenty years in one of the leading nations of Europe, it has been proposed in time to add insurance against unemployment. The goal seems to be a perfected system under which it will not be possible to find a workingman or his family in distress, because of temporary or permanent cessation of wages, except as the reult of his own wilful act.

As has already been shown, the greatest development in this direction has been in Germany. It is sufficient here to restate as briefly as possible the main features of the German system.

First, compulsory insurance against sickness in societies of a democratic type, subject to the control of their members. Employes contribute two-thirds of the entire premium income and employers one-third, out of which the cost of medical treatment, medicines hospital treatment, if necessary, and a daily sum of one-half the wages usually earned, are paid during the first 26 weeks of disability caused by sickness, and during the first 13 weeks of disability caused by accident.

*With the exception of the first sentence copied from "Workingmen's Insurance in Europe," by Lee K. Frankel and Miles M. Dawson.

Membership in these societies is obligatory upon all wage-earners. A choice is open to workingmen from among several classes of societies; namely, private sickness insurance societies, (to which the employer, however, is not obliged to contribute); establishment funds connected with particular factories or employers; trade societies, such as exist among the iron trades or are carried on by labor union; and communal or local societies which must receive everybody not insured elsewhere. The compulsion rests upon the employers, who must see that the contributions of their employes as well as their own are paid. Failing this, the communal sickness insurance society will perform its part precisely as if the employe had been a member and will collect from the employer the benefits paid and all the back premiums due, both from the employe and from the employer, together with a fine which may in case of contumacy be pretty large.

Contribution to sickness insurance: $4.29 yearly by insured workmen, and $1.90 yearly by employers per insured workmen. Benefits: $13.75 per year per sick member; $.70 per sick day.

Second, having by their contribution to sickness societies rid themselves of a portion of their legal liability for the consequences of industrial accidents, employers are next required to insure in mutual companies, composed of employers of the same general class, against liability for the consequences of industrial accidents extending beyond 13 weeks. These mutual companies adjust all claims, fix all rates of premiums and otherwise conduct their own business, subject only to supervision of the government. Benefits are paid in periodical installments to the injured workingman if he continues disabled beyond 13 weeks, throughout the entire period of his disability, and to his widow during her widowhood. His orphans receive pensions until they reach the age of fourteen, and longer if, because of feeble-mindedness or physical incapacity, they are not capable of self-support. Provision is also made for dependent parents and grandparents.

Yearly contributions to accident insurance: Premiums, $42,890,350; $2.03 per workman, $7.96 per establishment. Benefits: Total compensations, $37,772,648 to 980,044 persons: $38.44 per injured workman.

Third, a workingman disabled otherwise than by industrial accident, remaining partially or totally incapacitated longer than 26 weeks, is cared for by the invalidity insurance carried on by the government, which maintains a fund in each of a large number of districts, usually comprising a kingdom of the empire. Provision is made according to certain fixed rules not dependent upon the rate of wages previously received, but upon the length of time for which the insured had paid

premiums for disability insurance, benefits continuing throughout the lifetime of the permanently disabled workingman. Included in disability insurance is old age insurance. Under the law the attainment of the age of seventy is taken as evidence of permanent and total disability and the septuagenarian workingman is automatically entitled to a certain maximum income, if he has paid all premiums on his invalidity insurance. Toward this maximum income the government makes a small contribution annually in addition to what is paid from the invalidity insurance fund. This is the sole contribution of the German government to benefits payable under any portion of its scheme for the support of workingmen and their families. In all other branches, it defrays at most the expenses of supervision, deciding appeals and collecting statistics.

Yearly contribution to old age and invalidity insurance: $1.50 by workman; $1.50 by employers per workman; $.83 by state per workman; $3.83 total annual premium. Benefits: Average invalidity pension $41.50; old age pension $40; sickness pension $62.

At the present time, the government has before the Reichstag a proposal* planned on lines similar to the invalidity insurance scheme, for providing annuities to widows and orphans of workingmen whose deaths are caused otherwise than by occupational accidents. Cost of these annuities, as in the case of invalidity insurance, is to be met one-half by the employer and one-half by the employe, and is to be taxed upon all employes whether men or women, married or single.

This German program comes nearer to a complete and perfected scheme of social insurance than any planned or proposed elsewhere. Austria, however, as has been shown, is contemplating very nearly the same thing.

APPENDIX III.

SUGGESTIONS FOR A STATE LAW.

(From "State Insurance," by Frank W. Lewis.)

It would not be difficult to frame a practical scheme for workmen's insurance for a state like Massachusetts. It would perhaps follow in its general features the German law. It would indicate those upon whom the insurance should be obligatory, the amount of insurance to be carried, the several purposes to which it should be applicable, the amount of premiums, and the mode of payment. It could permit insurance through existing organizations but prescribe that it should be effected through the state unless equivalent provision had been made elsewhere subject to the approval of the Insurance Department. It might contemplate voluntary payments on the part of the insured, but direct that in case of failure to make such payments the employer should meet the insurance charges out of the wages of the employe.

The law would specify minutely under what conditions benefits should be paid; how long a period of disability from accidents should be covered and the amount payable, based upon wages; how much and what sick-pay should be allowed; in what form insurance should be paid in the event of death, whether by annuities or otherwise; at what age pensions should commence and what should constitute invalidity. It should also prescribe under what conditions medical and surgical attendance should be rendered and make provision for the construction of adequate hospitals and sanatoria.

For the administration of such a plan the state is already partially equipped. It has a highly efficient insurance department and an insurrance commissioner with large powers of supervision, control, and direction. This department can perform all of the actuarial work required for the proposed system. It can prepare and publish tables of morbidity and tariffs of risks, somewhat tentative at first but gradually attaining a high degree of accuracy. It could advise Richard Roe at any time of life and engaged in any kind of employment just what it will cost him per year, in a single item, to insure against death, accidents, sickness, invalidity, and old age.

The department would doubtless find it convenient to make use of the assessors in the cities and towns throughout the state in acquiring the data needed for its purposes. It would add but slightly to the work of the assessors, in their annual canvass of the state, to procure the additional information. In addition to the work of the insurance department and the assessors, there would be needed in each town or ward of a city an insurance agent whose work would be done under the direction of the department.

For the inauguration of such a system in Massachusetts, for example, hardly more is needed than an intelligent and definite purpose. There is not needed the constructive statesmanship of a Bismarck. The way has been blazed; the experiment of a quarter of a century ago has proved manifestly successful. The Utopia of yesterday has become the terra cognita of today.

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